

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

*In the Matter of*

Structure and Practices of the Video Relay  
Service Program

CG Docket No. 10-51

Telecommunications Relay Services and  
Speech-to-Speech Services for Individuals  
with Hearing and Speech Disabilities

CG Docket No. 03-123

**REPLY COMMENTS OF SORENSON COMMUNICATIONS LLC  
RE CONVO’S REQUEST FOR CLARIFICATION**

The comments in this proceeding confirm that the Commission should clarify the standard it will use to determine whether equipment is “service-related” or “non-service-related” under 47 C.F.R. § 64.604(c)(8)(v). The comments also underscore great confusion over how this rule applies to multi-use equipment that providers are already providing to VRS users—including tablets, laptops, smartphones, and NVIDIA SHIELD. The Commission should clarify the status of these multi-use devices promptly.

The Commission should, however, decline the invitations of Convo and ASL/Global to issue new rules through the “clarification” process. Doing so would be contrary to the Administrative Procedure Act and the Commission’s own regulations, which require that new rules be issued through the rulemaking process.

Finally, as explained in Sorenson’s opening comments, the Commission should clarify the scope of Paragraph 37 of its May 2019 Order, which purports to provide “guidance” regarding existing rules but sweeps far beyond the scope of any validly adopted rule.

**I. THE COMMISSION SHOULD CLARIFY ITS PROHIBITION ON “NON-SERVICE-RELATED INCENTIVES.”**

**A. The Comments Confirm Confusion Regarding ZVRS’s “OneVP,” Which Is an NVIDIA SHIELD.**

In its opening comments, Sorenson explained that the Commission has not adopted a comprehensible standard for distinguishing service- from non-service-related equipment—particularly for devices that have multiple uses such as smartphones, tablets, laptops, and the NVIDIA Shield. The comments in this proceeding underscore that point by demonstrating the great confusion and uncertainty on this issue. On the one hand, ZVRS contends that “the Commission has already determined” that its “OneVP,” which is an NVIDIA Shield, is service-related.<sup>1</sup> On the other hand, Convo argues that the Commission conclusively determined that the OneVP is *not* service-related.<sup>2</sup>

It is not hard to see why there is confusion on this point: the May 2019 Order addressed NVIDIA Shields only in a footnote, which simply did not answer the question. In the footnote, the Commission concluded that “giveaways of video gaming systems cannot be justified as service related.” It then stated: “We believe that this clarification sufficiently addresses the issues raised in the ex partes regarding ZVRS’ ‘OneVP’ device, which reportedly can be used for multiple purposes in addition to VRS, including but not limited to video gaming.”<sup>3</sup> But this statement does *not* sufficiently address the issue. The Commission clearly banned giveaways of

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<sup>1</sup> Comments of ZVRS and Purple Communications, Inc. at 11, CG Docket Nos. 03-123, 10-51 (filed Sept. 30, 2019) (“ZVRS Comments”).

<sup>2</sup> Comments of Convo Communications, LLC at 7, CG Docket Nos. 03-123, 10-51 (filed Sept. 30, 2019) (“Convo Comments”).

<sup>3</sup> *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd. 3396, 3415 n.124 (2019) (“Order”).

“video gaming systems.” But is the OneVP a “video gaming system” because it can be used for gaming, or is it not a “video gaming system” because it can be used “for multiple purposes”?

The order does not say.

**B. ZVRS Mischaracterizes Its Marketing of the OneVP.**

ZVRS suggests that its OneVP is not a “video gaming” system because it is “marketed and used primarily as a videophone.”<sup>4</sup> But that does not accurately describe how ZVRS markets the device. On its OneVP website, ZVRS describes the OneVP as an entertainment device that “also has” videophone capabilities: “The all-new OneVP is a top-notch multi-function entertainment unit that can play multiple apps [and] also has VP capabilities to make and receive calls.”<sup>5</sup> A video describing the OneVP on ZVRS’s website describes the OneVP as an “all-in-one device,”<sup>6</sup> and the first images of the device being used show a person scrolling between Netflix, YouTube, Amazon Prime Video, Sling, and other entertainment applications. The text below the video does refer to the OneVP as a “videophone solution” but also emphasizes its streaming capabilities: “Watch movies on Netflix, Prime Video, and many other top streaming apps.”<sup>7</sup> And it explicitly advertises that customers may use the NVIDIA Shield to play videogames,<sup>8</sup> access Facebook,<sup>9</sup> watch movies,<sup>10</sup> and “download any apps that are available in

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<sup>4</sup> ZVRS Comments at 6.

<sup>5</sup> *OneVP FAQs*, ZVRS, <https://www.zvrs.com/about/faqs/faq-for-onevp/> (last visited Oct. 11, 2019).

<sup>6</sup> *OneVP*, ZVRS, <https://www.zvrs.com/onevp/> (video) (last visited Oct. 11, 2019).

<sup>7</sup> *Id.* (FAQs).

<sup>8</sup> ZVRS, *Can I Buy My Own Game Controller and Use It on the OneVP*, YouTube (Apr. 17, 2019), <https://youtu.be/X3wHI2fuLu0>.

<sup>9</sup> ZVRS, *Can I Use Facebook*, YouTube (Apr. 17, 2019), [https://www.youtube.com/watch?v=MM\\_fh3IAbjg](https://www.youtube.com/watch?v=MM_fh3IAbjg).

<sup>10</sup> ZVRS, *Can I Watch Movies*, YouTube (Apr. 17, 2019), <https://www.youtube.com/watch?v=ZDr4QIjKiNA>.

the Google Play store.”<sup>11</sup>

All of this is consistent with the marketing of the NVIDIA Shield more generally. (As mentioned already, the OneVP is an NVIDIA Shield preloaded with ZVRS’s free Android app.) The NVIDIA Shield is primarily marketed as “the essential streaming media player for the modern living room.”<sup>12</sup> Its manufacturer primarily markets it as an entertainment and gaming device:

- “GAMING READY. BUILT FOR THE FUTURE. Why limit yourself to just one way to game when you can have multiple options in one device? Blockbuster titles, online multiplayer, action adventure, and even family favorites—all played from the comfort of your couch.”<sup>13</sup>
- “An engineering breakthrough for cloud gaming. Instantly transform your SHIELD TV into a GeForce-powered PC gaming rig. With hundreds of supported titles and features like cloud saves and cross-play on laptops and desktops, you can pick up a game from wherever you left off. Try the free beta and help shape the service. The future is yours to dominate.”<sup>14</sup>
- “NVIDIA SHIELD TV is the essential streaming media player for the modern living room. Thousands of apps. Thousands of games. The most 4K entertainment. And the Google Assistant built in.”<sup>15</sup>

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<sup>11</sup> ZVRS, *Can I Download Any Apps*, YouTube (Apr. 17, 2019), <https://www.youtube.com/watch?v=FxCr6gwxUp4>.

<sup>12</sup> *Shield*, NVIDIA, <https://www.nvidia.com/en-us/shield/> (last visited Oct. 11, 2019).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

- “WORLD-CLASS PERFORMANCE. SHIELD’s versatility and speed set it apart. It’s a streamer, game console, DVR, media server, and smart home hub with voice assistants. It’ll make even the most demanding user proud.”<sup>16</sup>
- “All the movies, shows, games, and music you could ask for. Cut the cord with live sports and DVR, play Chromecast apps, even show off your Google Photos.”<sup>17</sup>

### **C. The Commission Should Clarify the Status of Multi-Use Devices.**

Ultimately, the Commission must decide—once and for all—the status of the multi-use devices that providers are already giving away, including smartphones, tablets, laptops, and NVIDIA Shields. And it must articulate a clear standard that providers can apply to determine whether a device is “service related” or “non-service related.” Without such a clarification, it is simply not possible for providers to know what conduct is covered by the rule.

## **II. THE COMMISSION MUST DISREGARD CONVO’S AND GLOBAL’S IMPROPER REQUEST TO CREATE NEW RULES OUTSIDE THE RULEMAKING PROCESS.**

Convo’s Request for Expeditious Clarification asked the Commission to clarify two questions: (1) “the test that should be used to distinguish between non-service-related and service-related equipment for purposes of the application of new Section 64.604(c)(8)(v)” and (2) “under what circumstances, if any, Section 64.604(c)(8)(v) prohibits the give away by providers of free service-related equipment as an inducement for users to port their TDNs.”<sup>18</sup> Those were also the questions the Commission put out in the public notice initiating this

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Request for Expeditious Clarification of 47 C.F.R. § 64.604(c)(8)(v) of Convo Communications, LLC at ii, CG Docket Nos. 03-123, 10-51 (filed Aug. 19, 2019) (“Convo Petition”).

proceeding. Oddly, however, Convo’s comments do not seriously address either question. Convo devotes only a single sentence to the test that it believes should be used to distinguish service-related from non-service-related equipment.<sup>19</sup> Nor does Convo suggest any plausible clarification of how, if at all, Section 64.604(c)(8)(v) applies to service-related equipment. Instead, Convo spends the bulk of its comments arguing that “[t]he Commission should go further” than it did in the May 2019 Order.<sup>20</sup> Specifically, Convo argues that the Commission should prohibit VRS providers from giving away service-related equipment as well as non-service-related equipment. It further proposes a three-year transition with numerous onerous requirements.<sup>21</sup>

**A. The Commission Should Deny Convo’s Improper Request to Create New Rules through the “Clarification” Process.**

As ZVRS correctly explains, these questions go far beyond the scope of this “clarification” proceeding and are not properly before the Commission. Convo’s proposals (as well as the proposals of Global/ASL) amount to a wholesale rewrite of the existing rules and could be adopted only through the rulemaking process, including issuance of a notice of proposed rulemaking.<sup>22</sup> For the purposes of this proceeding, they must be disregarded.

Because Convo’s proposals are beyond the scope of this proceeding, Sorenson does not intend to respond to them in detail. Nevertheless, it bears emphasis that Convo’s comments are rife with errors. At the heart of Convo’s proposals is the false premise that VRS providers are

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<sup>19</sup> Convo Comments at 9 (“The Commission should clarify that ‘service-related equipment’ means any equipment that allows users to access VRS in a functionally equivalent manner as hearing people do with their telecommunications devices.”).

<sup>20</sup> Convo Comments at 7.

<sup>21</sup> *Id.* at 9.

<sup>22</sup> *See* 47 U.S.C. § 553; 47 C.F.R. § 1.412(a) (requiring prior notice of proposed rulemaking).

using “public money” to fund the distribution of TRS equipment. That is utter nonsense. The Commission excludes the costs of equipment from its calculations of providers’ costs, and those costs are not used in setting rates. When providers distribute service-related equipment, they do so using their own money.

Moreover, prohibiting providers from providing service-related equipment would be a big step backwards for deaf Americans and for functionally equivalent communication. Sorenson’s purpose-built videophones provide a significantly better experience than off-the-shelf equipment—including better resolution and a greater number of frames per second, which is important for the ability to read hand movements. That is why customers continue to show a high demand for purpose-built VRS equipment. Contrary to Convo’s assertions, Sorenson continues to install hundreds of new purpose-build videophones every month and to upgrade videophones of existing users, and only a small fraction of its customers chose to use only their mobile device in 2018 and 2019.

If the Commission prohibited the distribution of service-related equipment, it is likely that many or even most of these users would not be able to afford to purchase a videophone themselves. As Sorenson has previously explained, hearing Americans can purchase a phone for less than \$10 at Walmart, whereas a videophone costs hundreds of dollars.<sup>23</sup> Requiring deaf individuals to bear that disparate cost—and prohibiting providers from distributing equipment using their own funds—would be fundamentally inconsistent with the tenants of the ADA. *See*

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<sup>23</sup> *See* Walmart, *VTech CD1103WH Standard Phone White*, at <https://www.walmart.com/ip/VTech-CD1103WH-Standard-Phone-White/16472544> (phone for \$7.98) (last visited Oct. 15, 2019); Comments of Sorenson Communications Inc. and CaptionCall LLC, at 2-3, 15-16, CG Docket Nos. 10-51 & 03-123 (filed Aug. 19, 2013); Letter from John T. Nakahata, Counsel for Sorenson Communications, to Marlene Dortch, Secretary, Federal Communications Commission, at 11, CG Docket Nos. 10-51 & 03-123 (Mar. 14, 2017).

47 U.S.C. § 225. Convo apparently believes it can derive a competitive advantage from such a prohibition, but that would undermine the fundamental tenets of the ADA and come at the expense of the user experience.

**B. The Commission Should Clarify Its Existing Rules Regarding the Return of Equipment by Users Who Port to Other Providers.**

Although Convo’s comments largely are far afield from the scope of this proceeding, it does raise one issue on which clarification would be both useful and proper—the permissibility of requiring customers to pay for or return equipment when they port to another provider. Convo claims that ZVRS and Purple act unlawfully by requiring users to return or pay for equipment if they port to another provider. But that does not appear to be the best reading of the Commission’s rules. The Commission has rightly prohibited providers from conditioning use or possession of equipment “on the consumer making relay calls through its service or the service of any other provider.”<sup>24</sup> But the Commission has never suggested that providers cannot request return of or payment for equipment if the user ports away.

Convo relies on language in a subsequent order requiring providers to provide “consumer education and outreach materials” when customers register for VRS.<sup>25</sup> One of the required disclosures is that “the provider cannot condition the ongoing use or possession of equipment, or the receipt of different or upgraded equipment, on the consumer continuing to use the provider as its default provider.”<sup>26</sup> But the Commission’s “education and outreach materials” were intended

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<sup>24</sup> *Telecommunications Relay Servs. & Speech-to-Speech Servs. for Individuals with Hearing & Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd. 20140, 20175 ¶ 94 (2007).

<sup>25</sup> *Matter of Telecommunications Relay Servs. & Speech-to-Speech Servs. for Individuals with Hearing & Speech Disabilities*, Second Report and Order and Order on Reconsideration, 24 FCC Rcd. 791, 810 ¶ 38 (2008).

<sup>26</sup> *Id.*



to be a summary of the Commission’s prior rulings, which did not prohibit a provider from requiring return of or payment for equipment when a user ports away. The language quoted by Convo merely notes that a provider cannot require a user to agree not to port away at some point in the future as a condition of receiving equipment today. Any other reading would go beyond the rulings that the “consumer education” materials were summarizing and would raise serious regulatory-takings issues. The Commission should therefore clarify that it did *not* intend to prohibit providers from requesting the return of equipment from users who port away.

Contrary to Convo’s protestations, this does not “lock” consumers into any particular provider. As Convo acknowledges, all VRS providers offer free apps, which can be used on readily obtained off-the-shelf equipment, and Convo repeatedly argues that this equipment is affordable for consumers. Moreover, because consumers can export their contact lists to other providers via the X-Card functionality, a requirement to return equipment upon porting does not create a “lock in.”

### **III. THE COMMISSION SHOULD CLARIFY PARAGRAPH 37 OF ITS ORDER.**

Finally, nothing in the opening comments provides any obstacle to clarifying Paragraph 37 of the Commission’s Order, and the Commission should do so expeditiously. As Sorenson explained in its comments, Paragraph 37 purports to “remind” providers of pre-existing rules regarding distribution of service-related equipment, but the language in that paragraph sweeps far beyond any permissible interpretation of existing rules and is so vague as to render the “guidance” unenforceable. As explained in Sorenson’s comments, Sorenson’s previously proposed rules provide a strong starting point for such guidance, differentiating between conduct

that would be *per se* impermissible and conduct that should be subject to a reasonableness standard.<sup>27</sup>

Respectfully submitted,

A handwritten signature in black ink that reads "Mark Davis". The signature is written in a cursive, slightly stylized font.

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<sup>27</sup> *Id.*

## **CERTIFICATE OF SERVICE**

I certify that on October 15, 2019, true and correct copies of the foregoing were served by first-class mail upon the following:

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